

LESLIE E. DEVANEY
ANITA M. NOONE
LESLIE J. GIRARD
SUSAN M. HEATH
GAEL B. STRACK
ASSISTANT CITY ATTORNEYS

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

Casey Gwinn
CITY ATTORNEY

CIVIL DIVISION
1200 THIRD AVENUE, SUITE 1100
SAN DIEGO, CALIFORNIA 92101-4100
TELEPHONE (619) 533-5800
FAX (619) 533-5856

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REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

RICHARD B. ANDRADE v CITY OF SAN DIEGO
San Diego Superior Court Case No. GIC773095

INTRODUCTION

On June 17, 2002, the San Diego Superior Court ruled in the City's favor in an action challenging the Council's permanent debarment of Richard B. Andrade, a principal of J.G. Pipeline, Inc. A debarred contractor and its principals may not be awarded City contracts.

FACTS

On July 24, 2001, Council permanently debarred J.G. Pipeline Inc., and its principals, Judy Ng Go (President), Jaime Parraga (Vice President), Richard Andrade (Responsible Managing Employee), George Frost, and James Jackson, for "corrupt practices involving the award of a contract with the City." The basis of the debarment was that J.G. Pipeline had been formed for the purpose of circumventing the Council's previous debarment of Southern California Underground Contractors, Inc. [SoCal], and its officers Frost and Jackson, and was in essence a front for SoCal to allow SoCal to bid on City contracts. Andrade, who was SoCal's attorney, was responsible for the formation of J.G. Pipeline, and was J.G. Pipeline's Responsible Managing Employee. Of those debarred, only Andrade challenged the Council's decision, claiming his debarment was not supported by the evidence, and that he was not afforded a fair hearing before an impartial tribunal. The superior court disagreed with both of his contentions.

The following facts, among others, were presented at the July 24, 2001, Council debarment hearing:

On June 26, 2000, Council permanently debarred SoCal, including its principals, George Frost (President) and James Jackson (Vice President), for "corrupt practices involving the

administration of a contract with the City."¹ SoCal was represented at the Council debarment hearing by its attorney, Richard Andrade. In addition to being SoCal's attorney, Andrade was the former owner of SoCal and had sold it to its present owners, Frost and Jackson, with whom he had worked for several years.

Four days after SoCal's debarment, Andrade signed the Articles of Incorporation creating J.G. Pipeline. Andrade filed J.G. Pipeline's application for a contractor's license with the Contractor's State License Board in which he listed Judy Ng Go as the President and himself as the Responsible Managing Employee. Subsequent investigation by the City revealed that Judy Ng Go is the sister-in-law of George Frost, SoCal's President, and that Go and SoCal had the same listed address. No explanation was presented at the debarment hearing by anyone associated with J.G. Pipeline, including Andrade, as to how Go became associated with J.G. Pipeline, nor her qualifications to be the president of a company bidding on million dollar contracts.

Andrade claimed that he formed J.G. Pipeline with Jaime Parraga, a long time employee of SoCal. Parraga was listed as J.G. Pipeline's Vice President. Evidence indicated that Parraga was only a "mechanic/leadman" with SoCal, and continued to be employed by SoCal after Andrade claimed he and Parraga had formed J.G. Pipeline.

Andrade, who is also an individually licensed contractor, listed himself as J.G. Pipeline's Responsible Managing Employee for the purpose of allowing J.G. Pipeline to obtain a contractor's license to bid on City contracts. The legal requirements to be listed as a Responsible Managing Employee include that the individual is a permanent employee of the company, is actively engaged in its operation, and "shall be responsible for exercising that direct supervision and control of his employer's construction operations as is necessary to secure full compliance with the rules and regulations relating to construction operations."

Evidence was presented at the debarment hearing that J.G. Pipeline used SoCal assets, employees, telephone, and fax numbers. Evidence also indicated that J.G. Pipeline only bid on City of San Diego contracts, where SoCal was debarred, and that those submitting the bids on J.G. Pipeline's behalf were either known SoCal employees, or arrived in vehicles with SoCal

¹ The debarment of SoCal was subsequently overturned by the superior court in March 2001, based upon a procedural finding that SoCal had not been provided with sufficient time to prepare its defense to the allegations. The Council again permanently debarred SoCal, upon the same basis, in May 2001. In October 2001, the superior court rejected SoCal's claim that it was not afforded procedural due process, but ruled, based upon an interpretation of the debarment ordinance, that a three year debarment, rather than a permanent debarment, applied. This ruling is currently on appeal with the appellate court.

markings. Andrade claimed that SoCal had completely shut down its San Diego division operations after its debarment, however evidence was presented showing SoCal continued to operate in the area.

At the conclusion of the hearing, Council permanently debarred Andrade, along with J.G. Pipeline and its other listed principals, in essence finding that J.G. Pipeline was essentially a continuation of SoCal, formed for the purpose of circumventing SoCal's debarment.

LITIGATION

Andrade filed a Petition for Writ of Mandate on August 22, 2001, seeking to have the superior court overturn his permanent debarment. Andrade claimed his debarment was not supported by the evidence, and that he was not afforded a fair hearing before an impartial tribunal. On June 7, 2002, after reviewing the debarment hearing administrative record, and written briefs submitted by the parties, Judge E. Mac Amos issued a tentative ruling denying Andrade's writ. After oral argument on June 14, 2002, the court took the matter under submission, and filed its formal order on June 17, 2002, denying the writ. The court found that the decision to debar Andrade was "supported by the weight of the evidence." The court noted that the evidence was "substantial" that J.G. Pipeline was "created to circumvent the permanent debarment of SoCal." The court further held that "the circumstantial evidence is overwhelming that Petitioner [Andrade] knew J.G. was simply a continuation of SoCal." As to Andrade's claim that he was not afforded a fair hearing before an impartial tribunal, the court held that Andrade had not presented any evidence of actual bias.

Senior Deputy City Attorney Sim von Kalinowski handled the litigation case on behalf of the City. Deputy City Attorney Jacqueline Lindsay, Head Deputy City Attorney Keri Katz, and City Attorney Investigator Wendy Kramer assisted City staff in the preparation of the administrative case for the debarment hearing before Council.

Respectfully submitted,

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CASEY GWINN
City Attorney

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RC-2002-10